

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7236 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge? No

BABU RAMPRASAD KHAR THRO' BROTHER KAKUBHAI RAMPRASAD

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr.L.R.Poojari, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/02/99

ORAL JUDGEMENT

1. The petitioner, through this writ petition under Article 226 of the Constitution of India, has challenged the detention order dated 22.7.1998 passed by the Police Commissioner, Vadodara City, under Section 3(2) of the Prevention of Anti-social Activities Act (for short "PASA") and has prayed for quashing of the impugned order and has further prayed that the detenu may be released immediately from illegal detention.

2. From the grounds of detention it appears that on account of registration of five cases against the detenu under the Bombay Prohibition Act and also in view of statements of three confidential witnesses the detaining Authority was subjectively satisfied that the detenu is a bootlegger and his activities were prejudicial for maintenance of public order. Accordingly the impugned order of detention was passed against the detenu.

3. The impugned order has been challenged by the learned Counsel for the petitioner on two grounds.

4. Firstly it has been argued that the activities of the detenu cannot be said to be prejudicial for maintenance of public order. Subjective satisfaction of the detaining Authority that the detenu is a bootlegger has not been challenged by the learned Counsel for the petitioner. Registration of five cases under the Bombay Prohibition Act and statements of three confidential witnesses relating to bootlegging activities of the detenu were sufficient material before the detaining Authority to reach subjective satisfaction that the detenu is a bootlegger.

5. Learned A.G.P. has argued that because the activities of the detenu, viz. bootlegging activity could not be curbed by taking action under the ordinary law, hence he has been detained. I am affraid this contention can be accepted. Provisions of PASA cannot be used for detaining a person from desisting in indulging in bootlegging activities. Bootlegging activity may be illegal, but to put a curb on such activity provisions of PASA can hardly be used. This provision can be used only when the activities of the petitioner connected with bootlegging activities are found to be prejudicial for maintenance of public order. For this the five registered cases could not be pressed in service by the detaining Authority to arrive at his subjective satisfaction for the obvious reason that nothing is disclosed in the grounds of detention that at the time of those incidents the petitioner created any situation or indulged in activities which were prejudicial for maintenance of public order. There is no mention that the petitioner resisted the search and seizure of illicit and foreign liquor.

6. Then remains the statements of three confidential witnesses. After examining these witnesses it is manifestly clearly that the incident was directly connected with the petitioner and the witnesses. No

doubt on the alarm of the witnesses members of public collected at the spot and tried to save them. Seeing that sharpened edged weapons were shown towards them by the petitioner and his companions they ran for safety. In this way and also because no injury was caused to any member of the public nor any injury of sharpened edged weapon was caused to the three witnesses it can hardly be said that these three incidents were prejudicial for maintenance of public order. These incidents were between the petitioner and his companion on the one hand and the witnesses on the other hand. The members of the public were not directly involved in the incidents. As such the detention order is rendered illegal and is liable to be quashed.

7. The second contention has been that from the statements of the confidential witnesses it seems that the grounds of detention were formulated first and then the witnesses were examined. In support of this contention the opening sentence in the statements of three witnesses reading as "corroborated the facts of Paras : 1 & 2" was referred. It is difficult to say that the statements were recorded after formulation of grounds of detention. It may be absurd mistake on the part of the detaining Authority not to produce the gist of the statement which was supporting para : 1 & 2 of the grounds of detention. The face value of the statements of confidential witnesses has to be taken and its effect has been considered above.

8. However, only one ground is sufficient for quashing the detention order.

9. The writ petition, therefore, succeeds and is hereby allowed. The impugned detention order dated 22.7.1998 is hereby quashed. The detenu shall be released forthwith unless wanted in some other cases.

sd/-

Date : February 24, 1999 (D. C. Srivastava, J.)

sas